

clause binds to the agreement any entity with is directly or indirectly controlled the by the officer, directors, partners or stockholders of the signator company. Second, Plaintiff claims that Defendant Rand Stoneworks is as an alter ego to Defendant Stoneworks by Rand and consequently responsible for the payment of the employee benefit contributions subject to this claim. It appears that the relationship between these two corporations is at the center of the dispute over the amount of contributions owed to the Funds.

Rule 15(a) of the Federal Rules of Civil Procedure provides that leave to amend a pleading "shall be freely given when justice so required." The United States Supreme Court has stated that:

"In the absence of any apparent or declared reason -- such as unduc delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, etc. - - the leave should, as the rules require, be "freely given."

*Foman v. Davis*, 371 U.S. 178, 182 (1962). The inquiry central in each case is whether an amendment would result in undue prejudice to the defendant. *Alberto-Culver Co. v. Gillette Co.*, 408 F.Supp. 1160 (N.D. Ill. 1976) [citing *United States v. Hougham*, 364 U.S. 310, 316 (1960) ("Rule 15 . . . was designed to facilitate the amendment of pleadings except where prejudice to the opposing party would result.")].

The scheduling conference in this case took place on March 10, 2004 and discovery has just commenced. The addition of a related corporation will not pose any undue prejudice to the Defendant at this point in the litigation. The motion complies with the anticipated scheduling order that allows Motions of Amendments to Pleadings until April 12, 2004.

### **CONCLUSION**

For all the foregoing reasons, Plaintiff requests the Motion for Leave to Amend Complaint be granted, attached hereto is the Amended Complaint.

Dated: 4/8/04

Respectfully submitted,

For the Plaintiff,

A handwritten signature in cursive script, appearing to read "Catherine M. Campbell", written over a horizontal line.

Catherine M. Campbell

BBO# 549397

Feinberg, Campbell & Zack, PC

177 Milk Street

Boston, MA 02109

(617) 338-1976